

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 16-22822-Misc-COOKE/TORRES

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

AMERICAN SALES & MANAGEMENT  
ORGANIZATION, LLC,

Respondent.

---

**RESPONDENT'S MOTION FOR 1-WEEK  
EXTENSION OF TIME TO RESPOND TO PETITION**

The Respondent, American Sales & Management Organization, LLC, d/b/a Eulen America, hereby submits this motion seeking a one-week extension of time within which to respond to the Petition in this matter. In further support of this Motion, the Respondent states:

1. In this matter, the National Labor Relations Board seeks enforcement of an investigatory administrative subpoena issued by it as part of its investigation into alleged unfair labor practices. Before the Board, the Respondent objected to the enforcement of the subpoena on the grounds that it is not subject to the Board's jurisdiction. In particular, the Respondent has asserted that it is an employer subject to the Railway Labor Act and, as such, it is specifically excluded from coverage under the National Labor Relations Act. 29 U.S.C. § 152(2).

2. As it did before the Board, the Respondent takes the position before this Court that it is not subject to the Board's jurisdiction under the National Labor Relations Act by virtue of its status as a derivative air carrier covered by the Railway Labor Act. As the Eleventh Circuit has recently made clear, the jurisdiction of the Board is subject to challenge before the district court in

a proceeding to enforce a subpoena. To this end, in *Amerijet Intern., Inc. v. NLRB*, 520 Fed Appx. 795 (11th Cir. 2013), the Court noted, “if, for example, the NLRB seeks to enforce a subpoena under section 11(2) of the NLRA, 29 U.S.C. § 161(2), it must do so in the district court, and Amerijet would be free to challenge the Board’s jurisdiction at that point.” *Id.* at 798.

3. On October 25, 2016, the Court directed that the Respondent file a response to the Board’s Petition seeking enforcement of the administrative subpoena within fourteen (14) days. The Respondent’s response is currently due on Tuesday, November 8, 2016.

4. Since the Court’s issuance of its October 25 order, the undersigned has been out of town for depositions on October 26, 27, 28, and November 3 and 4. Accordingly, while the undersigned has been diligently preparing a response to the Petition, additional time is needed to provide a comprehensive response, particularly in light of the fact-intensive nature of the jurisdictional issue to be decided in this matter. Accordingly, the undersigned seeks an extension of time through Monday, November 14, 2016, within which to file its response to the Petition.

5. The undersigned has sought to confer with counsel for the Petitioner, but as of the filing of this motion has not heard from the Board as to whether it opposes the requested extension.

WHEREFORE, the Respondent, American Sales & Management Organization, LLC, respectfully requests that this Court grant this motion and extend the time within which to respond to this matter until November 15, 2016.

Respectfully submitted,

s/ Brian Koji

Brian Koji

Florida Bar No. 0116297

**Allen Norton & Blue, P.A.**

Hyde Park Plaza, Suite 225

324 S. Hyde Park Avenue

Tampa, Florida 33606-4127

Tampa, Florida 33606-4127

(813) 251-1210

Primary: [bkoji@anblaw.com](mailto:bkoji@anblaw.com)

Secondary: [amccclanahan@anblaw.com](mailto:amccclanahan@anblaw.com)

[tcarnevalini@anblaw.com](mailto:tcarnevalini@anblaw.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8th day of November, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to Marinelly Maldonado, Esquire, 51 SW 1<sup>st</sup> Avenue, Room 1320, Miami, FL 33130 [[marinelly.maldonado@nlrb.gov](mailto:marinelly.maldonado@nlrb.gov)].

s/ Brian Koji

Attorney